IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE M.N.KRISHNAN

TUESDAY, THE 24TH JULY 2007 / 2ND SRAVANA 1929

CRP.No. 772 of 1996(F)

CMA.22/1996 of D.C. & SESSIONS COURT, ERNAKULAM
OS.444/1994 of II ADDL.SUB COURT,ERNAKULAM
.....

REVN. PETITIONER/ APPELLANTS IN THE CMA AND THE PLAINTIFFS IN THE ORIGINAL SUIT:
----

1. **C.R. MURALEEDHARAN, AGED 50, S/O RAMAN OF CHIRACKEL HOUSE, IRUMPANAM DESOM, THIRUVAMKULAM VILLAGE.**

2. **ANEESH C MURALI, AGED 21, S/O G.R. MURALEEDHARAN CHIRACKAL HOUSE, IRUMPANAM, THIRUVAMKULAM VILLAGE.**

BY ADV. C. VARGHESE KURIAKOSE

RESPONDENTS/RESPONDENTS IN CMA AND DEFENDANT IN THE SUIT:

K.K. SOMAN, AGED ABOUT 47, S/O KUNJE, KARIMANGULAM HOUSE, NOW RESIDING ALONG WITH K.K. RAGHAVAN, KOLLIMATTAH HOUSE, 25/311, NEAR OEN, THEKKUMBHAGAM, TRIPUNITHURA.

BY

THIS CIVIL REVISION PETITION HAVING BEEN FINALLY HEARD ON 24/07/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

M.N. KRISHNAN, J.

= = = = = = = = = = = = = = =

C.R.P. NO. 772 OF 1996

= = = = = = = = = = = = = = =

Dated this the 24th day of July, 2007.

O R D E R

This revision petition is preferred against the order of the learned District Judge, Ernakulam in CMA 22/96. A suit O.S.444/94 was filed before the Subordinate Judge, Ernakulam for an injunction against the defendant restraining him from entering the plaint schedule property and also for Rs.1,000/- as damages. So the relief sought for is with respect to an immovable property and for compensation for wrong done to a tree standing in the immovable property. U/s 16 of the CPC where he subject matter relates to an immovable property it must be instituted where the subject matter is situated. Here, admittedly, the subject matter is situated within the jurisdiction of the Sub court, North Paravur.

2. The learned counsel for the revision petitioner wants to highlight on the question of jurisdiction by contending that since the suit for injunction is also a relief in personum it can be related to a person and if the defendant

is residing within that jurisdiction the suit can be filed therein also. First of all, the jurisdictional aspect has to be considered on the status existing on the date of the suit and the right in personum will come into operation only when a decree is passed. Therefore, when there is a specific crystal clear provision under Section 16 of the CPC it has to be held that the suit has to be instituted within the jurisdiction of the Subordinate Judge, North Paravur. The learned District Judge also had considered the decision relied upon by the learned counsel for the plaintiff reported in ***Malabar Industrial Co. Ltd. (1986 KLT 409)*** and held that the decision is a clearly distinguishable one and it was a case where a share holder filed a suit against the Company in Alappuzha for an injunction against selling a rubber estate in Pathanamthitta at a lower price. There was no dispute that the estate belonged to the defendant's company. In such a situation the Court found that S.16 of the CPC was found applicable. The learned District Judge held that the facts of the case herein is different and therefore it cannot apply.

Lastly, the learned counsel for the writ petitioner submits that one of the plaintiff is dead and the other legal representatives are on record. So, for the purpose of disposing of this C.R.P. I find that there is substantial representation and therefore the C.R.P. is dismissed. There will be a direction to return the plaint and as the matter had been under challenge continuously before various Court, the Court an fix a date for representation before proper Court afresh.

M.N. KRISHNAN, JUDGE.

ul/-

M.N. KRISHNAN, J.

= = = = = = = = = = =

C.R.P. No. 772 OF 1996

= = = = = = = = = = = =

O R D E R

24th July, 2007.